

Amendment No. 2 to HB0786

**Kisber
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Comm. Amdt. _____

AMEND Senate Bill No. 277*

House Bill No. 786

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-6-207(3)(A)(ii), is amended by deleting the language “, and” at the end of subitem (ee) and by substituting instead a period and by deleting subitem (ff) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 50-6-207(4), is amended by adding the following as a new item:

(C)

(i) If an employee is determined, by trial or settlement, to be permanently totally disabled, the employer, insurer or the department of labor and workforce development, in the event the second injury fund is involved, may have the employee examined, at the expense of the requesting entity, from time to time subject to the conditions outlined in this section and may seek reconsideration of the issue of permanent total disability as provided herein.

(ii) The request for the examination of the employee may not be made until twenty-four (24) months have elapsed following the entry of a final order in which it is determined that the employee is permanently totally disabled. Any request for an examination is subject to considerations of reasonableness in regard to notice prior to examination, place of examination and length of examination.

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(iii) A request for an examination may not be made more often than once every twenty-four (24) months. The procedure for this examination shall be as follows:

(a) The requesting entity shall first make informal contact with the employee, either by letter or by telephone, to attempt to schedule an appointment with a physician for examination at a mutually agreeable time and place. It is the intent of the general assembly that the requesting entity make a good faith effort to reach a mutual agreement for examination, recognizing the inherently intrusive nature of a request for examination.

(b) If, after a reasonable period of time, not to exceed thirty (30) days, mutual agreement is not reached, the requesting entity shall send the employee written "notice of demand for examination" by certified mail, return receipt requested on a form provided by the department of labor and workforce development. The form shall clearly inform the employee of the following: the date, time and place of the examination; the name of the examining physician, the employee's obligations, any pertinent time limitations, the employee's rights, and any consequences of the employee's failure to submit to the examination. The examination shall be scheduled to take place within thirty (30) days of the date on the notice.

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(c) After receipt of the "notice of demand for examination", the employee shall either submit to the examination at the time and place identified in the notice form, or, within thirty (30) days from the date of the notice, the employee shall schedule an appointment for a different date and time conducted by the same physician, and this examination shall be completed no later than ninety (90) days from the date of the notice.

(d) In the event the employee fails to submit to the examination at the time and place identified in the notice form and fails to schedule, within thirty (30) days from the date of the notice, an alternative examination date, as provided in subitem (c) above, then the employee's periodic benefits shall be suspended for a period of thirty (30) days.

(e) In the event the employee schedules an alternative date for the examination as provided in subitem (c) above, and fails to submit to the examination within the ninety (90) day period, then the employees' periodic benefits shall be suspended for a period of thirty (30) days beginning at the end of the ninety (90) day period within which the alternatively scheduled examination was to be completed.

(f) If the employee submits to examination within any period of suspension of benefits, then within fourteen (14) days of

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such submission, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension of benefits shall be remitted to the employee.

(g) Within ten (10) days of the date on which periodic benefits are suspended pursuant to either subitems (d) or (e) above, the entity suspending the periodic benefits, shall notify the department of labor and workforce development, in writing, that periodic benefits have been suspended and the date on which the periodic benefits were suspended and shall provide the department a copy of the original "notice of demand for examination" sent to the employee.

(h) After the department receives notice of suspension of benefits pursuant to either subitems (d) or (e) above, the department shall contact the employee and for a period of thirty (30) days assist the employee to schedule an examination to be conducted by the physician named in the notice. After the thirty (30) day assistance period has elapsed, if the employee has not submitted to examination, the department shall authorize the employer, insurer or department to suspend periodic benefits for a period of thirty (30) days. At the conclusion of each thirty (30) day suspension period, periodic benefits shall be restored. After the restoration of periodic benefits, the department shall, in thirty (30)

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day cycles, continue to assist the employee to schedule the examination, to be followed by thirty (30) day cycles of suspension of benefits until such time as the examination of the employee is completed. If, at any time during any period of suspension of periodic benefits, the employee submits to examination, then within fourteen (14) days of notice of the examination having been conducted, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension shall be remitted to the employee.

(iv) Subsequent to an examination as described herein, the employer, insurer or department may request a reconsideration of the issue of whether the employee continues to be permanently totally disabled based on any changes in the employee's circumstances that have occurred since the time of the initial settlement or trial.

(v) Prior to filing any request for reconsideration, the employer, insurer or department shall request a benefit review conference with the department of labor and workforce development. The parties may not waive such benefit review conference. If the parties are unable to reach an agreement at the benefit review conference, the employer, insurer or department may file a request for reconsideration before the court originally adjudging or approving the award of permanent total disability. In the event that a settlement approved by the department of labor and

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workforce development is to be reconsidered under these provisions then a cause of action should be filed as provided in Tennessee Code Annotated, § 50-6-225.

(vi) In the event a reconsideration request is filed pursuant to this section, the only remedy available to the employer, insurer or department is the modification of or termination of future periodic disability benefits.

(vii) In the event the employer, insurer or department files a request for reconsideration or cause of action hereunder and the court does not terminate the employee's future periodic disability benefits, the employee shall be entitled to an award of reasonable attorney fees, court costs and reasonable and necessary expenses incurred by the employee in responding to the request for reconsideration upon application to and approval by the court. In determining what attorney fees shall be awarded hereunder, the court shall make specific findings in respect to the following criteria:

(a) The time and labor required, the novelty and difficulty of the questions involved in responding to the request for reconsideration, and the skill requisite to perform the legal service properly.

(b) The fee customarily charged in the locality or by the attorney for similar legal services.

(c) The amount involved and the results obtained.

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(d) The time limitations imposed by the client or by the circumstances.

(e) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(D)

(i) The employer, insurer or department, in the event the second injury fund is involved, shall notify the department, on a form to be developed by the department of the entry of a final order adjudging an employee to be permanently totally disabled. The form shall be submitted to the department within thirty (30) days of the entry of the order.

(ii) On an annual basis, the department of labor and workforce development shall require an employee who is receiving permanent total disability benefits to certify on forms provided by the department that he or she continues to be permanently totally disabled, that he or she is not currently working at an occupation which brings the employee an income and has not been gainfully employed since the date permanent total disability benefits were awarded, by trial or settlement.

(iii) The department shall send the certification form to the employee by certified mail, return receipt requested and shall include a self-addressed stamped envelope for the return of the completed form.

(iv) In each annual cycle, if the employee fails to return the form to the department within thirty (30) days of the date of receipt of the form, as

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evidenced by the date on the return receipt notice, then the department shall notify the entity who gave notice to the department that the employee was permanently totally disabled pursuant to subitem (i) above that four (4) weeks of periodic disability benefits shall be withheld from the employee as a penalty for the failure to return the form to the department. If the completed form is returned to the department within one hundred twenty (120) days of the date on the return receipt notice, the department shall notify the appropriate entity and then, within fourteen (14) days of receipt of the notice from the department, that entity shall refund to the employee the entire four (4) weeks of periodic disability benefits previously withheld from the employee.

SECTION 3. Tennessee Code Annotated, Section 50-6-207(4)(A)(ii) is amended by deleting the subitem in its entirety and substituting instead the following:

(ii) Notwithstanding other provisions of the law to the contrary and notwithstanding any agreement of the parties to the contrary, permanent total disability payments shall not be commuted to a lump sum, except in accord with the following: (a) benefits may be commuted to a lump sum to pay only the employee's attorney's fees and litigation expenses and to pay pre-injury obligations in arrears; (b) the commuted portion of an award payable to the employee shall not exceed the value of one hundred (100) weeks of the employee's benefits; (c) after the total amount of the commuted lump sum is determined, the amount of the weekly disability benefit shall be recalculated to

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distribute the total remaining permanent total benefits in equal weekly installments beginning with the date of entry of the order and terminating on the date the employee's disability benefits terminate pursuant to section (4)(A)(i) above.

SECTION 4. Tennessee Code Annotated, Section 50-6-102, is amended by adding a new subsection as follows:

() "Mental injury" means a loss of mental faculties or a mental and/or behavioral disorder where the proximate cause is a compensable physical injury resulting in a permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus. A mental injury shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities.

SECTION 5. Tennessee Code Annotated, Section 50-6-102(12), is amended by inserting the language "and shall include a mental injury arising out of and in the course of employment " immediately after the language "death of the employee" and the punctuation ";" at the end of the item.

SECTION 6. This act shall take effect on July 1, 2002, the public welfare requiring it and shall apply to injuries occurring on or after July 1, 2002.